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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
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17 **Cecil Eugene Shaw,**

18 Plaintiff,

19 v.

20 **Chow W. Chan**, in individual and  
21 representative capacity as trustee of  
22 The Chow W. Chan 1995 Trust;  
23 **La Veracruzana Restaurant, Inc.**,  
24 a California Corporation; and Does  
25 1-10,

26 Defendants.

27 **Case No.**

28 **Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

29  
30 Plaintiff Cecil Eugene Shaw complains of Chow W. Chan, in individual  
31 and representative capacity as trustee of The Chow W. Chan 1995 Trust; La  
32 Veracruzana Restaurant, Inc., a California Corporation; and Does 1-10  
33 (“Defendants”), and alleges as follows:

34  
35 **PARTIES:**

- 36 1. Plaintiff is a California resident with physical disabilities. He suffers  
37 from debilitating back and hip pain. He uses a wheelchair for mobility.  
38  
39 2. Defendant Chow W. Chan, in individual and representative capacity as  
40 trustee of The Chow W. Chan 1995 Trust, owned the real property located at

1 or about 1510 Jackson Street, Santa Clara, California, in November 2019.

2       3. Defendant Chow W. Chan, in individual and representative capacity as  
3 trustee of The Chow W. Chan 1995 Trust, owns the real property located at or  
4 about 1510 Jackson Street, Santa Clara, California, currently.

5       4. Defendant La Veracruzana Restaurant, Inc. owned Taqueria La  
6 Veracruzana located at or about 1510 Jackson Street, Santa Clara, California,  
7 in November 2019.

8       5. Defendant La Veracruzana Restaurant, Inc. owns Taqueria La  
9 Veracruzana (“Restaurant”) located at or about 1510 Jackson Street, Santa  
10 Clara, California, currently.

11      6. Plaintiff does not know the true names of Defendants, their business  
12 capacities, their ownership connection to the property and business, or their  
13 relative responsibilities in causing the access violations herein complained of,  
14 and alleges a joint venture and common enterprise by all such Defendants.  
15 Plaintiff is informed and believes that each of the Defendants herein,  
16 including Does 1 through 10, inclusive, is responsible in some capacity for the  
17 events herein alleged, or is a necessary party for obtaining appropriate relief.  
18 Plaintiff will seek leave to amend when the true names, capacities,  
19 connections, and responsibilities of the Defendants and Does 1 through 10,  
20 inclusive, are ascertained.

21

22           **JURISDICTION & VENUE:**

23       7. The Court has subject matter jurisdiction over the action pursuant to 28  
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
27 of action, arising from the same nucleus of operative facts and arising out of  
28 the same transactions, is also brought under California’s Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2       9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
3 founded on the fact that the real property which is the subject of this action is  
4 located in this district and that Plaintiff's cause of action arose in this district.  
5

6       **FACTUAL ALLEGATIONS:**

7       10. Plaintiff went to the Restaurant in November 2019 with the intention to  
8 avail himself of its goods, motivated in part to determine if the defendants  
9 comply with the disability access laws.

10      11. The Restaurant is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12      12. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
13 to provide accessible paths of travel leading into and through the Restaurant in  
14 conformance with the ADA Standards as it relates to wheelchair users like the  
15 plaintiff.

16      13. On information and belief, the defendants currently fail to provide  
17 accessible paths of travel.

18      14. Additionally, on the date of the plaintiff's visit, the defendants failed to  
19 provide accessible restrooms in conformance with the ADA Standards as it  
20 relates to wheelchair users like the plaintiff.

21      15. On information and belief, the defendants currently fail to provide  
22 accessible restrooms.

23      16. These barriers relate to and impact the plaintiff's disability. Plaintiff  
24 personally encountered these barriers.

25      17. By failing to provide accessible facilities, the defendants denied the  
26 plaintiff full and equal access.

27      18. The failure to provide accessible facilities created difficulty and  
28 discomfort for the Plaintiff.

1       19. The defendants have failed to maintain in working and useable  
2 conditions those features required to provide ready access to persons with  
3 disabilities.

4       20. The barriers identified above are easily removed without much  
5 difficulty or expense. They are the types of barriers identified by the  
6 Department of Justice as presumably readily achievable to remove and, in fact,  
7 these barriers are readily achievable to remove. Moreover, there are numerous  
8 alternative accommodations that could be made to provide a greater level of  
9 access if complete removal were not achievable.

10      21. Plaintiff will return to the Restaurant to avail himself of its goods and to  
11 determine compliance with the disability access laws once it is represented to  
12 him that the Restaurant and its facilities are accessible. Plaintiff is currently  
13 deterred from doing so because of his knowledge of the existing barriers and  
14 his uncertainty about the existence of yet other barriers on the site. If the  
15 barriers are not removed, the plaintiff will face unlawful and discriminatory  
16 barriers again.

17      22. Given the obvious and blatant nature of the barriers and violations  
18 alleged herein, the plaintiff alleges, on information and belief, that there are  
19 other violations and barriers on the site that relate to his disability. Plaintiff will  
20 amend the complaint, to provide proper notice regarding the scope of this  
21 lawsuit, once he conducts a site inspection. However, please be on notice that  
22 the plaintiff seeks to have all barriers related to his disability remedied. See  
23 Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
24 encounters one barrier at a site, he can sue to have all barriers that relate to his  
25 disability removed regardless of whether he personally encountered them).

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1           **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
2 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4           23. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7           24. Under the ADA, it is an act of discrimination to fail to ensure that the  
8 privileges, advantages, accommodations, facilities, goods and services of any  
9 place of public accommodation is offered on a full and equal basis by anyone  
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
11 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 12           a. A failure to make reasonable modifications in policies, practices,  
13           or procedures, when such modifications are necessary to afford  
14           goods, services, facilities, privileges, advantages, or  
15           accommodations to individuals with disabilities, unless the  
16           accommodation would work a fundamental alteration of those  
17           services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18           b. A failure to remove architectural barriers where such removal is  
19           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
20           defined by reference to the ADA Standards.
- 21           c. A failure to make alterations in such a manner that, to the  
22           maximum extent feasible, the altered portions of the facility are  
23           readily accessible to and usable by individuals with disabilities,  
24           including individuals who use wheelchairs or to ensure that, to the  
25           maximum extent feasible, the path of travel to the altered area and  
26           the bathrooms, telephones, and drinking fountains serving the  
27           altered area, are readily accessible to and usable by individuals  
28           with disabilities. 42 U.S.C. § 12183(a)(2).

1       25. When a business provides paths of travel for its customers, it must  
2 provide accessible paths of travel.

3       26. Here, accessible paths of travel have not been provided.

4       27. When a business provides restrooms, it must provide accessible  
5 restrooms.

6       28. Here, accessible restrooms have not been provided.

7       29. The Safe Harbor provisions of the 2010 Standards are not applicable  
8 here because the conditions challenged in this lawsuit do not comply with the  
9 1991 Standards.

10      30. A public accommodation must maintain in operable working condition  
11 those features of its facilities and equipment that are required to be readily  
12 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

13      31. Here, the failure to ensure that the accessible facilities were available  
14 and ready to be used by the plaintiff is a violation of the law.

15

16      **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
17      RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
18      Code § 51-53.)**

19      32. Plaintiff repleads and incorporates by reference, as if fully set forth  
20 again herein, the allegations contained in all prior paragraphs of this  
21 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
22 that persons with disabilities are entitled to full and equal accommodations,  
23 advantages, facilities, privileges, or services in all business establishment of  
24 every kind whatsoever within the jurisdiction of the State of California. Cal.  
25 Civ. Code § 51(b).

26      33. The Unruh Act provides that a violation of the ADA is a violation of the  
27 Unruh Act. Cal. Civ. Code, § 51(f).

28      34. Defendants’ acts and omissions, as herein alleged, have violated the

1 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
2 rights to full and equal use of the accommodations, advantages, facilities,  
3 privileges, or services offered.

4       35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
5 discomfort or embarrassment for the plaintiff, the defendants are also each  
6 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
7 (c).)

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9

**PRAYER:**

10     Wherefore, Plaintiff prays that this Court award damages and provide  
11 relief as follows:

12     1. For injunctive relief, compelling Defendants to comply with the  
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
14 plaintiff is not invoking section 55 of the California Civil Code and is not  
15 seeking injunctive relief under the Disabled Persons Act at all.

16     2. Damages under the Unruh Civil Rights Act, which provides for actual  
17 damages and a statutory minimum of \$4,000 for each offense.

18     3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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21 Dated: December 29, 2019

CENTER FOR DISABILITY ACCESS

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By:



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Amanda Seabock, Esq.  
Attorney for plaintiff

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